1992

Clark Bigler and Utah Taxpayers Association v. Glen K Vernon : Brief of Appellee

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

CLARK BIGLER and UTAH TAXPAYERS ASSOCIATION, Plaintiffs/Appellants	:	
vs.	:	Case No. 92003
GLEN K. VERNON, Payson City Administrator; and PAYSON CITY CORPORATION, Defendants/Appellees.	:	Priority No. 16

BRIEF OF APPELLEES

ON APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
FOR UTAH COUNTY, STATE OF UTAH — JUDGE RAY M. HARDING

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SUPREME COURT JURISDICTION

This court has jurisdiction in this matter pursuant to Utah Code Ann. § 78-2-2(3)(f)(1992 Replacement).[1]

ISSUES PRESENTED FOR REVIEW

1. Are UTA's claims time-barred by its failure to file a referendum petition within the time period mandated by both the Utah Constitution and the Utah State referendum statute?[2]

2. Did the citizens of Payson ratify the Utility Tax, and thereby render UTA's claims moot, when they voted by a margin of more than four to one to issue water revenue bonds to construct a pressurized irrigation system using proceeds from the Utility Tax as a supplemental source of monies to pay the bonds?[3]

3. Is Utah Code Ann. § 20-11-21(2), which specifically excludes "any budget or tax levy" from the referendum process, constitutional?

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[1]All further references to Utah Code Ann. shall be to the most recent version unless otherwise indicated.

[2]This issue is dispositive of the entire case and ought to be decided before proceeding with the other issues. This was the only issue decided by the District Court. Appellees filed a motion for summary disposition based on this issue. This court deferred ruling on the motion for summary disposition until "plenary presentation and consideration of the case."

[3]The District Court made no comment about issues 2, 3 and 7. The court's dicta concerning issues 4, 5 and 6 was general in nature. "When there is no indication in the record on appeal that the trial court reached or ruled on an issue, this court will not undertake to consider the issue on appeal." Broberg v. Hess, 782 P.2d 198, 201 (Utah App. 1989).

4. Does art. XIII, § 5 of the Utah Constitution, which vests the power to impose taxes in the "corporate authorities" of local government, exclude local tax levies from the referendum process?

5. Are revenue enactments adopted by a city council excluded from the referendum process?

6. Were UTA's rights to free speech abridged by the denial of an application for a referendum petition when it retained an unrestricted right to prepare and circulate a petition on its own?

STANDARD OF REVIEW

There were no disputed issues of fact, and the issues were decided on summary judgment. Therefore, deference is not accorded the District Court's decision. Hill v. Seattle First National Bank, 821 P.2d 457 (Utah 1992). However, as this is a case which challenges the constitutionality of a statute, the statute "will be presumed to be valid, until the contrary is shown beyond all reasonable doubt." State ex rel. Breeden v. Lewis, 26 Utah 120, 72 P. 388, 389 (1903).

DETERMINATIVE CONSTITUTIONAL AND STATUTORY PROVISIONS

I. Applicable Provisions of the Utah State Constitution

A. Utah Const. art. VI, § 1:

> The Legislative power of the State shall be vested:
>
> . . .
>
> 2. In the people of the State of Utah, as hereinafter stated:
>
> . . .

The legal voters or such fractional part thereof as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect. (Emphasis added.)

B. Utah Const. art. XIII, § 5(a):

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation. Notwithstanding anything to the contrary contained in this Constitution, political subdivisions may share their tax and other revenues with other political subdivisions as provided by statute. (Emphasis added.)

II. Applicable State Statutes

A. Utah Code Ann. § 10-3-712:

Ordinances shall become effective 20 days after publication or posting or 30 days after final passage by the governing body, whichever is closer to the date of final passage, but ordinances may become effective at an earlier or later date after publication or posting if so provided in the ordinance.

B. Utah Code Ann. § 20-11-24:

(1) Referendum petitions against any ordinance, franchise, or resolution passed by the governing body of a county, city, or town shall be filed with the clerk or recorder within 30 days after the passage of the ordinance, resolution or franchise.

. . .

C. Utah Code Ann. § 20-11-21:

. . .

> (2)(b) The legal voters of any county, city, or town may not require any budget or tax levy adopted by the governing body of the county, city, or town to be submitted to the voters. (Emphasis added.)

STATEMENT OF THE CASE

I. Proceedings Before the District Court

On October 17, 1990, Clark Bigler and the Utah Taxpayers Association (referred to collectively as the "UTA") filed a complaint against Payson City and its city administrator Glen Vernon (collectively referred to as "Payson" or "Payson City") for failure to issue referendum petitions to Clark Bigler and others who submitted an application to refer a Payson Utility Revenue Tax ("Utility Tax"). UTA alleged that Payson City had no basis to deny the petition application as Payson City had misinterpreted the meaning of "tax levy" in the statute that precludes referral of "any budget or tax levy"; UTA claims that the enactment of the Utility Tax was not a "tax levy." UTA further alleged that if it was a tax levy, then the statute was unconstitutional as it abridged UTA's claimed constitutional right to refer such a tax. UTA sought an injunction to require the issuance of the petition copies and to submit the tax to a referendum election. UTA further sought a declaration of the meaning of "tax levy" and of the constitutionality of the exclusion of tax levies from the referendum process at the local level. UTA also requested attorneys' fees for a claimed violation of UTA's civil rights. (R. 1-14 and 65-94.)

Payson disputed each of UTA's claims and further alleged that the claims were constitutionally and statutorily time-barred. (R.21-27.) The issues were submitted to the District Court on cross motions for summary judgment. On November 6, 1991, Judge Ray M. Harding issued a memorandum decision ruling that UTA's claims were time-barred. The court further commented that it believed the Utility Tax was not a "tax levy" but rather was an entirely "new scheme of taxation" that, but for the time bar, would be referable. The decision requested UTA to prepare the order. (R. 265-66.)

On November 13, 1991, the court issued a correcting memorandum decision requesting Payson City, as the prevailing party, to prepare the order. (R. 267.) UTA requested a hearing to determine the reason for the correction. The hearing was held by telephone on November 19, 1991. The court reiterated that all claims were time barred, and therefore, Payson City was the prevailing party and the one to prepare the order. The court further stated that any comment in the original decision relating to any issue other than time bar was there "by way of dicta only." (R.306.) On December 2, 1991, the court entered summary judgment in favor of Payson City on all claims. (R. 322-23.)

Prior to the entry of the summary judgment, UTA filed a Motion To Rule On All Claims. (R.284.) On December 16, 1991, the court issued a memorandum decision denying the motion as an improper motion to reconsider or, alternatively, on the basis "that its finding that plaintiff's claims were time barred renders the other independent issues before the court moot." (R. 333.) On December 31, 1991, UTA filed its notice of appeal. (R. 337-40.) On January 31, 1992, the court entered an order denying UTA's motion to rule on all claims. (R. 348-49.)

II. Statement of Facts

Payson City is a city in rapid transition from a small rural community to a medium sized community. This growth and the expected future growth has created serious ongoing financial challenges for city government in assessing the needs of the city and finding the sources of revenue to meet those needs. On March 7, 1990, as part of a plan to meet the ever-increasing demand for capital improvements, the Payson City Council passed City Ordinance No. 02-21-90A (the "Payson Ordinance") whereby Payson implemented the Utility Tax within the limits approved by the Utah State Legislature in Utah Code Ann. § 11-26-1 et seq. (Supp. 1990). Such a tax had not been collected previously by Payson. The Payson Ordinance restricts the use of the proceeds of the Utility Tax to capital construction projects or related debt service. (R. 56-58.)

On March 26, 1990, Payson received an application for referendum petition copies signed by Clark Bigler and others (the "Applicants"). (R. 53-54.) On April 2, 1990, Payson City gave notice to the Applicants that it declined to take any action relative to the Applicants' effort to submit the Payson Ordinance to a referendum vote. This notice was given after careful consideration of the Utah statutes which specify that no "budget or tax levy" may be referred. (R. 49.) After April 2, 1990, Payson did not hear of nor did it receive any information that the Applicants or any other person or entity disagreed with Payson's decision not to submit the Payson Ordinance to a referendum vote until Payson received the summons in this matter on October 17, 1990. (R.15.) As the district court determined, the Applicants did not pursue available

procedures to require a referendum vote, such as preparing and circulating their own petition or timely seeking a writ of mandamus requiring Payson to prepare the petition.

As of April 6, 1990, the effective date of the Payson Ordinance, only the application for a petition had been submitted, no verified petition for referendum of the Payson Ordinance had been filed. Under the Utah Constitution and applicable statutes, any petition to refer the Utility Tax was required to be filed by April 6, 1990.

Revenues from the Utility Tax were budgeted for the first time in the fiscal 1990-91 budget. It was estimated that approximately $150,000 would be available during the fiscal year ($20,000 as a fund balance from fiscal 1989-90 and $130,000 from fiscal 1990-91). The projected available revenue was budgeted to be expended for various capital improvement projects.

On Tuesday, September 11, 1990, at a special bond election held at the same time as the regular primary election, the following ballot proposition was put before the voters of Payson:

> Shall water revenue bonds of Payson City, Utah County, Utah, in an amount of not to exceed $3,600,000, due and payable in not to exceed twenty-six (26) years from the date or dates of said bonds, payable solely from the revenues of the water system of said City, <u>together with so much of the revenues of the utility revenue tax of said City as may be available from time to time therefor,</u> said bonds to bear interest at no more than five percent (5%) per annum, be issued and sold for the purpose of paying all or part of the cost of acquiring and constructing a pressurized irrigation system, said system to be owned and controlled by said City?"

(Emphasis added.) The proposition was approved by more than a four-to-one margin: 1,152 for and 252 against. (R. 107-08.)

Residents of Payson were given notice of the Pressurized Irrigation Proposition in an information brochure mailed to each postal patron residing or doing business in Payson in late August, 1990. The brochure states in several places that part of the revenue needed to service the debt for the pressurized irrigation system project would come from monthly service charges and connection fees, and that "[t]he recently passed utility franchise tax on non-city utilities would provide the balance of the annual revenue needed to make the payments." The bond issue and the means of payment were also discussed in detail at each of two public information meetings, duly noticed and advertised, held on Thursday, September 6, 1990, at the Payson City Center Banquet Hall, and on Friday, September 7, 1990, at the Payson High School Auditorium. (R. 106-07.)

On October 17, 1990, after Payson City had relied on the availability of the Utility Tax in preparing and implementing its budget and in submitting a bond proposal to the citizens for a pressurized irrigation system, Payson City received a copy of the summons and complaint in this matter and discovered that UTA was attempting to obtain an injunction to stop the collection of the Utility Tax and to declare the statute, which precludes the referral of budgets and tax levies, unconstitutional.

SUMMARY OF ARGUMENT

Subject to the conditions imposed by law, the Utah Constitution provides for the referral to the electorate of certain legislative enactments of local government. According to existing Utah precedents, appropriation ordinances of a technical nature, such as budgets and tax levies, matters of state wide concern, and ordinances that are

more in the nature of an administrative function rather than a governmental function are not subject to referendum. The Utility Tax fits each of these exceptions.

The referendum statute, consistent with the scope of the constitutional provision for referendum, appropriately excludes budget and tax levy ordinances. Indeed, to allow such a referendum would violate another more specific section of the Utah Constitution which reserves the right to levy municipal taxes exclusively to municipal elected officials.

UTA failed to file with Payson a proper petition within the thirty days required by the Utah Constitution and the referendum statutes. The claims are further barred by UTA's failure to timely pursue the claims, resulting in severe prejudice to Payson. Finally, the Utility Tax was ratified by the electorate, and the issue is now moot.

Consistent with this court's obligation not to rule on constitutional issues if it is possible to resolve the matter on different grounds, Hoyle v. Monson, 606 P.2d 240, 242 (Utah 1980), the non-constitutional issues will be addressed first.

ARGUMENT

I. Utah's Failure to File a Petition Within the Thirty-day Period Required by the Utah Constitution and by Statute Precludes its Present Claims

A. UTA's Claims are Time-Barred.

The District Court properly ruled that all of UTA's claims were time-barred by reason of UTA's failure to file a petition within the time required by the constitution and by statute. Though UTA lists as an issue on appeal whether UTA is entitled to an injunction ordering Payson City to issue the requested petition copies (Appellants' Issue No. 7) and presumably to proceed with a referendum process as to the Utility Tax, it apparently concedes that the district court ruling, at least as to the request for an

injunction, was correct (Appellants' Brief 12); UTA does not address the injunction issue in its brief, nor is such injunctive relief requested in its conclusion. This concession, however, does not make the district court's ruling as to time bar any less applicable to the remainder of UTA's claims. Indeed, it amounts to an admission by UTA that it seeks an advisory opinion.

Article VI, § 1 of the Utah Constitution provides for referral of some municipal legislation to the legal voters of any legal subdivision of the state, provided this is done before the challenged law or ordinance "shall take effect." Pursuant to Utah Code Ann. § 10-3-712, the effective date of the Ordinance was thirty days after passage. As required by the Utah Constitution, a completed petition for referendum had to be filed within that period.

Consistent with the Constitution, Section 20-11-24(1) of the Utah Code requires any referendum petition to be filed with the clerk or recorder within 30 days after passage of an ordinance.[4]

The policy underlying both the constitutional and statutory provisions requiring timely submittal is that uncertainty as to whether a validly enacted municipal ordinance has become law must be avoided. See, Allan v. Rasmussen, 101 Utah 33, 41, 117 P.2d 287, 290 (1941).

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[4]UTA focuses on the denial of the application rather than the time for filing a petition. The statute says nothing about when an application for a petition must be filed; it simply requires that a completed petition with sufficient numbers of verified, valid signatures be filed within 30 days irrespective of anything related to an application for a petition.

In Allan, the court denied a motion for a peremptory writ of mandamus and quashed a temporary writ which had been issued to require a city recorder to submit a petition for referendum that had been filed. The city recorder refused to do so because the petition names had not been checked and verified by the county clerk against county voter registration lists within the prescribed amount of time. The court determined that it was the duty of the petitioners to obtain the clerk's certification and that filing the unverified petition with the city did not satisfy this duty. Id. 101 Utah at 40; 117 P.2d at 290. The court said that the reason all procedural steps must be completed by the statutory deadline was to avoid "uncertainty as to what was the law . . . The time when it is obligatory to have before the filing officer a sufficient petition to require submission has been by the legislature keyed to the effective date of such law, absent such a petition then filed." Id. 101 Utah at 41; 117 P.2d at 290.

In Riverton Citizens for Constitutional Government v. Beckstead, 631 P.2d 885 (Utah 1981), this court determined that it was fatal to a referendum petition not to have it filed within the thirty days required by statute. The court found that there must be strict compliance with the time constraints. In reference to Allan, the court stated the following: "we find no express repeal of the rule that requires a referendum petition to be checked, certified, and filed within 30 days." Id. at 887.

In Palmer v. Broadbent, 123 Utah 580, 260 P.2d 581 (1953), residents of Cedar City submitted to the city recorder an application for a referendum petition. The city recorder, in good faith, refused to provide printed petition copies because of the applicants' failure to comply with the technical requirements for a referendum. The

residents then prepared, printed, circulated and filed their own petition. The Utah Supreme Court acknowledged that the applicants acted properly in order to meet the time limitation for filing a petition.

> If they [applicants] had waited for her [the recorder] to obtain these printed petition copies, there was no reason to believe that they would be furnished in time to accomplish their purpose, so they had them printed themselves . . . [T]he only safe course they could take was to do as they did, circulate the petitions without her signature or the corporate seal affixed to her certificate. So that is what they did.

Id. 123 Utah at 587-88; 260 P.2d at 584-5.

Utah Code Ann. §§ 20-11-11 and 20-11-23(2)(a) require the city recorder to provide applicants with the petition form, as did the predecessor sections applicable in the Palmer. However, as indicated in Palmer, the Applicants had the right to prepare their own petition and should have done so to preserve their rights once they were informed that the petition copies would not be issued.[5]

Petition applicants are not left at the mercy of delays by the government. They either do as the applicants did in the Palmer case or alternatively they may timely obtain a writ of mandamus requiring the city recorder to provide the requested petitions, as was attempted in the Allan case. Section 20-11-16(5) of the referendum statutes specifically provides mandamus as a remedy for failure by a governmental entity to accept petitions.

The reason a petition was not filed, if indeed UTA was entitled to file such a petition, is not that Payson failed to give UTA the requested petition copies, which

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[5]Utah Code Ann. § 20-11-15 provides in part that "[t]he forms prescribed in this chapter are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors."

refusal was based on statute; the petition was not filed due to UTA's own lack of diligence in pursuing its available options.[6]

UTA had a constitutional duty to make certain that a legally sufficient referendum petition was filed prior to the effective date of the ordinance. It failed to do so. Alternatively, UTA could have filed a mandamus action, which would have tolled the running of the time period, thus delaying the effective date of the Ordinance, and preserving judicial consideration of its claims. It failed to do so. Thus, all of its claims are barred by the Utah Constitution and Section 20-11-24(1) of the Utah Code as determined by the trial court.[7]

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[6]UTA asserts that the denial of the application "made it more difficult, if not impossible, to timely file a petition within 30 days because they would have to make their own circulation copies or raise sufficient money to file a legal action to compel the recorder to issue certified petition copies." (Appellants' Brief 14). This is specious because section 20-11-11(2) imposes the cost of printing copies on the applicants in any event. As to mandamus, cost is inherent in our system of justice. Lack of financial resources, if indeed there was a lack of such resources in this instance, does not work to toll or eliminate statutory and constitutional time requirements.

[7]UTA's claims are also barred by the doctrine of laches. Laches is delay that works a disadvantage to another. It requires two elements: (1) The lack of diligence on the part of plaintiff; and (2) An injury to defendant owing to such lack of diligence. The length of time needed to trigger laches depends on the circumstances of each case, for the propriety of refusing a claim is equally predicated upon the gravity of the prejudice suffered by defendant and the length of plaintiff's delay. Papanikolas Bros. Enterprises v. Sugarhouse Shopping Center Associates, 535 P.2d 1256, 1260 (Utah 1975). UTA did nothing until October 17, 1990 when the complaint in this matter was filed. Once the ordinance became effective (April 6, 1990), Payson committed the revenue to be generated from the tax to capital improvements throughout the city and relied on the tax in the creation of a budget for the city. Payson also asked and received approval from the electorate to construct a pressurized irrigation system to be funded in part by the Utility Tax, to the extent the same was made available by the City Council. It simply is inequitable for UTA to slumber on such an important issue knowing that Payson was relying on the tax to meet the needs of this growing city. To allow the tax to be disturbed at this point would jeopardize all that the city has done in reliance on the tax in the interim.

B. As UTA's Claims for Declaratory Relief are Time-Barred, There is No Case or Controversy.

1. Constitutional and statutory time limitations apply to claims for declaratory relief.

The district court's decision that UTA's claims are time-barred by the Utah Constitution art. VI, § 1 and Utah Code Ann. §20-11-21 necessarily extends to the declaratory relief claims.

In Sullivan v. Bd. of County Comm'rs. of Arapahoe County, 692 P.2d 1106 (Colo. 1984), the court held that "the sheriff here 'may not seek to accomplish by a declaratory judgment what [he] can no longer accomplish directly under C.R.C.P. 106(a)(4) [mandamus] . . . .'" Id. at 1109. Though the underlying purpose of the mandamus proceeding in the Sullivan case is different than that presented by this case, the procedural context is virtually identical, and the holding is directly applicable to this case.

In Sullivan, the sheriff challenged the Board's dismissal of the sheriff for failure to follow rules governing the operation of the jails and sought an injunction as well as a declaratory judgment that the Board had exceeded its authority. The court held that the sheriff's remedy was mandamus. Because he did not file a mandamus proceeding within the prescribed thirty day period, his claims, including the request for declaratory judgment, were barred. Likewise, UTA in this case failed to take the steps available to preserve and pursue its claims by either circulating its own petition or, as in Sullivan, timely seeking a writ of mandamus. Having failed to do so, its claims, including the requests for declaratory relief, are barred.

In Goose Hollow Foothills League v. City of Portland, 58 Or. App. 722, 650 P.2d 135, 138 (Or. App. 1982), the court held that when other remedies are available (as there were in this case through the circulation of its own petition or through mandamus) and the other remedies are barred by the statute of limitations, then declaratory relief is also unavailable.[8]

2. No justiciable controversy presently exists, and UTA's request for declaratory judgment is simply an inappropriate request for an advisory opinion.

The Sullivan court also explained that because the sheriff's claims were time-barred, there was no case or controversy upon which to rule. Consequently, the remaining request for declaratory relief was merely a request for an advisory opinion.

> Given that the relief as to the actual controversy over Toney is unavailable to the sheriff, the remaining requests for a declaratory judgment seek only an advisory opinion. . . The declaration sought by the parties regarding the general powers of the sheriff and the Board to control personnel and budgetary matters in the

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[8]UTA argues that Utah Code Ann. § 78-12-28 gives it two years to file a claim for declaratory relief as a civil rights claim. This argument was raised for the first time in UTA's motion to rule on all claims which the district court denied as being an inappropriate motion to reconsider or in the alternative a ruling that all claims were time barred. The argument should be rejected. In determining which time limitation may apply to claims, "it is the substance of the right sued on, and not the remedy invoked, that governs." Luckenbach Steamship Co., Inc. v. U.S., 312 F.2d 545, 552 n.2 (2nd Cir. 1963). The substance of UTA's claimed right is a right to receive petition copies which was barred thirty days after the passage of the Ordinance. The time period for circulating referendum petitions provided in the Constitution and in the implementing statute is in the nature of a statute of repose, making Utah Code Ann. § 78-12-28 inapplicable. One purpose of statutes of repose is to provide certainty in a particular area of public concern. Raithaus v. Saab-Scandia of America, 784 P.2d 1158, 1161 (Utah 1989). This certainty is particularly necessary for municipal legislation. In addition, Utah Code Ann. § 78-12-28 cannot abrogate constitutional provisions. The drafters of the Constitution imposed a requirement that petition signatures be submitted prior to the effective date of the enactment sought to be referred.

> sheriff's department is unavailable because [given the time-bar] it is not grounded upon any actual controversy concerning those matters.

Id. at 1109-10.

UTA argues that declaratory judgments should be liberally construed and administered. This is generally accepted; however, "notwithstanding its broad terms, the declaratory judgment legislation is still subject to the requirements of justiciability . . . ." Merhish v. H. A. Folsom & Associates, 646 P.2d 731, 733 n.3 (Utah 1982). The Sullivan court found that by reason of the time-bar, plaintiff's claims were no longer justiciable.

> although the Uniform Declaratory Judgment Law . . . is to be liberally construed and administered, . . . we have nevertheless consistently required that "[a] proceeding for declaratory judgment must be based upon an actual controversy and not be merely a request for an advisory opinion."

Sullivan, 692 P.2d at 1110.

The four conditions stated in Baird v. State, 574 P.2d 713, 715 (Utah 1978), for declaratory relief simply do not exist in this case: (1) there is no justiciable controversy. Sullivan, 692 P.2d at 1109-10; (2) the interests of the parties are not adverse as there is no current conflict, given the time-bar; (3) by reason of UTA's failure to act timely, they have no legally protectable interest; and (4) the issue is not ripe because past actions are time-barred and future activity is speculative. The failure to have one of these elements present renders the matter unsuitable for declaratory judgment. The absence of all of them makes UTA's request inexplicable.

3. UTA's claims are not capable of repetition, yet evading review.

UTA suggests that even if the claims are time-barred the court ought to review the challenged act as it is capable of repetition, yet evading review. "This 'repetition/evasion' exception is a narrow one, and applies only in 'exceptional situatons.'" Headwaters, Inc. v. Bureau of Land Management, Medford District, 893 F.2d 1012, 1016 (9th Cir. 1989).

The Headwaters court stated that "[w]here prompt application for a stay pending appeal can preserve an issue for appeal, the issue is not one that will evade review." Id. at 1016. In Kulp Foundry, Inc. v. Sect'y. of Labor, 691 F.2d 1125, 1130 (3rd Cir. 1982), the court ruled that plaintiff's "lack of prompt and diligent action in taking an appeal is also determinative of whether the case falls within this exception to the mootness doctrine." Prompt action on UTA's part when the application for referendum petitions was denied, either through circulation of their own petitions or mandamus, would have preserved the issue and will do so in the future. Therefore, this is not an issue that would evade review unless UTA again fails to pursue its legally available remedies in a timely fashion.[9]

UTA tries to fabricate a potential controversy by suggesting that it is in the process of preparing an initiative petition that will challenge the Utility Tax and

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[9]UTA's reliance on Meyer v. Grant, 486 U.S. 414, 417 n.2 (1988) is inappropriate. Both parties in that case stipulated that under the particular facts of the case the issue was capable of repetition between the two parties and yet could evade meaningful review. Also, there was no discussion in the case of any procedures available to the applicants to preserve the issue, such as those that exist in this case.

speculates that Payson would reject an application for such an initiative petition. (Appellants' Brief 14-15.) This assertion was made as early as December before the trial court, yet there is nothing in the record to support such a statement. Nevertheless, an initiative petition for an existing tax, even the Utility Tax, could well involve a variety of facts and legal issues which could distinguish it in significant ways from the referendum issues raised in this case. For example, depending on the scope of the petition and actions taken in reliance on the Utility Tax, the proposed petition could produce a violation of the contracts clause of the United States Constitution. UTA wants this Court to indicate how it would rule on a constitutional issue under hypothetical facts for a situation that may never occur, and which, if it did occur, might diverge significantly from the facts of the case at bar. There is simply no assurance that any decision in this case will avoid litigation on an alleged, undefined, future initiative petition that may affect rights and obligations in ways not yet determined.

The potential variety of factual situations which an advisory opinion in this case would affect is illustrated by a similar lawsuit filed by UTA wherein it challenged the entire county budget because of a fifty percent increase in the Sevier County property tax. The case was Ricksecker, Utah Taxpayers Association et al v. Wall and Sevier County, filed in the Sixth Judicial District Court of Utah as civil number 10836 on March 21, 1991. (R. 194-227.) Sevier County had adopted a budget that effectively raised property taxes by forty-nine percent. Residents of Sevier County filed an application for a petition to refer the entire "1991 Sevier County Budget Resolution." Petition copies were issued and the applicants filed the completed petitions within the

time required. Sevier County then rejected the petition on the basis that budgets and tax levies are not referable. (R. 197.) The Sixth Judicial District of the State of Utah agreed and dismissed UTA's claims.

UTA requests this court to declare that a "new tax scheme" is referable. In Sevier, UTA argued that a change in an existing tax, coupled with a budget ordinance, is referable. The district court in this matter indicated in dicta that it believed the Utility Tax was "a new tax scheme" and would be referable, perhaps implying that a change in an existing tax would not be. For purposes of this issue, there is no significant difference between imposition of a new tax and a significant increase in an existing tax. A decision based on this distinction would only invite more litigation as to what constitutes a new tax scheme and as to how much of a change in an "existing" tax would trigger a referendum "right." These are issues which involve such a plethora of factual variables that they should not be resolved in an advisory context.

In Headwaters, the plaintiff challenged the B.L.M.'s policy concerning timber harvests and sought a declaratory judgment on the issue. The Court ruled that the case was moot because the trees at issue had already been harvested. The plaintiff asked for a declaratory judgment concerning the same policies as they may be applied to other forest areas. The court held that "[t]he application of the disputed policies to future sales is too uncertain, and too contingent upon the BLM's discretion, to permit declaratory adjudication predicated on prejudice to Headwaters' existing interests." Id. at 1015-16. Likewise, in this case, the issue of whether Payson will accept an application for initiative petitions which have not been filed or the acceptance of any petitions that may

be circulated is too uncertain, and too contingent upon both the citizens' and Payson's discretion to permit declaratory relief. There simply is no existing interest that is prejudiced.

"To contain a live issue, a case must involve a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. . . ." Id. at 1129 n.7.

The case of Salt Lake County v. Salt Lake City, 570 P.2d 119, 121 (Utah 1977) is in harmony with these principles.

> [T]his [purpose for declaratory judgment procedure] does not go so far as to require courts to become involved in the adjudication of moot or abstract questions, nor as is sometimes stated, to furnish a fishpond for judicial legal advice.
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> For those reasons there must be a genuine justiciable controversy in that (1) the interests of the parties involved are adverse, (2) the party seeking relief must have, or assert a bona fide claim, of a legally protectable interest therein, and (3) the issues must be ripe for judicial determination. That is, it must appear either that there is actual controversy, or that there is a substantial likelihood that one will develop so that the adjudication will serve a useful purpose in resolving or avoiding controversy or possible litigation.

As illustrated in Sullivan, Goose Hollows Foothills League, Headwaters, Inc. and Kulp Foundry, Inc., a justiciable controversy no longer exists in this matter as a referendum petition on the Utility Tax is time-barred. The possible extension of jurisdiction over potential conflicts suggested by the Salt Lake County case, must be limited to similar legal issues and limited potential factual results such as that presented

in the Salt Lake County case. A decision should not be rendered unless there is an assurance that it would serve to avoid future litigation.

In Salt Lake County, the county sued Salt Lake City to obtain a declaration of the county's right to continue to receive water from the city. It was a fact-specific issue involving a continuing supply of life sustaining water. Under those facts, the court was assured that a decision would avoid future litigation. That is not this case.

"The courts are not a forum for hearing academic contentions or rendering advisory opinions." Baird v. State, 574 P.2d 713, 715 (Utah 1978). "Fundamental principles of procedure dictate that we not adjudicate moot issues. . . ." Stromquist v. Cokayne, 646 P.2d 746, 748 (Utah 1982); see also Merhish v. H.A. Folsom & Associates, 646 P.2d 731, 732 (Utah 1982). This is particularly true of questions of a constitutional nature. Hoyle v. Monson, 606 P.2d 240, 242 (Utah 1980).

II. The Payson City Utility Tax Ordinance was Ratified by the Electorate in the September 11, 1990 Bond Election for the Pressurized Irrigation System, Making a Referendum Election Unnecessary

On September 11, 1990, the voters of Payson City approved the issuance of bonds to finance the construction of a pressurized irrigation system. The official ballot stated that the source of repayment for the bonds would consist, in part, of "so much of the revenues of the utility revenue tax of said City as may be available from time to time. . . ." Likewise the election brochure mailed to every household in Payson prior to the election identified in several places that the revenue generated by the utility revenue tax was expected to be a source of repayment for the bonds over the twenty-six year term of the bond. Public meetings were held where this was specifically addressed.

With full knowledge and in expectation of the tax as a supplemental source of repayment, the citizens of Payson voted by a margin of more than four to one to approve bonds to finance the system.

The doctrine of ratification by voters is well established. In one recent case, the Supreme Court of New Hampshire stated that the voters, with sufficient knowledge of their representatives' action, could ratify that action. Sanborn Regional School Board, 579 A.2d 282 (1990). In a variety of specific factual contexts, courts have held that the ratification of voters makes valid even an otherwise improper or illegal act of their elected representatives. Tyler v. Common School District No. 76, 298 P.2d 215 (Kan. 1956) (Second election of voters ratified first invalid election to issue bonds; lawsuit based on first election was moot); Oliver Iron Mining Co. v. Independent School Dist., 193 N.W. 949 (Minn. 1923).

Based on the foregoing, even if it is determined that the voters of Payson City should have been afforded the right to vote on the Utility Tax, the voters had that opportunity when they passed the bond measure on September 11, 1990. As they voted, the voters were well apprised of the utility franchise tax enacted by the city council and knew that an affirmative vote for the bond was also an implicit vote in favor of the utility franchise tax.

III. Utah Code Ann. § 20-11-21(2) Prohibited Payson City from Issuing a Referendum Petition for the Utility Revenue Tax Ordinance

Utah Code Ann. § 20-11-21 specifically provides that "any budget or tax levy" may not be referred. The Utility Tax was a tax levy within the meaning of this section and constitutes an integral part of Payson's budget. The wisdom of the Utah Legislature

in excepting budgets and tax levies from the referendum process seems apparent. If a small group of voters could challenge any proposed revenue or expenditure measure of a city, the orderly operation of cities and towns would be thoroughly disrupted. A local government effectively could be shut down while the citizens waited for an election to determine whether a budget, including the comprehensive plan for raising revenue, was acceptable to the populace. The budget and taxation process, taken as a whole, is necessarily so complex and covers so many diverse areas of municipal operations that even occasional disruption by a referendum vote could be devastating to orderly government. No better illustration of this potential exists than UTA's own challenge to Sevier County's budget.

Had UTA succeeded and a majority of citizens had voted against the fifty percent increase in property taxes, Sevier County would have been immobilized.[10] It would then have been required to start the entire budget process anew with no assurance that whatever new budget was determined would not be delayed further by a handful of citizens who obtained enough signatures to have the matter placed on a referendum ballot. A local government could be reduced to passing successive budgets, hoping that petitioners would either be sufficiently satisfied to let one go into effect without another

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[10]County budgets are set in December for the following calendar/fiscal year. A timely referendum petition would prevent the budget from going into effect until after the election. Under Utah Code Ann. § 20-11-23(1), taken together with the provision for holding an election, it appears that the election would not take place until the next general election, which could be as long as 23 months after the petitions are filed. See, Utah Code Ann. § 20-1-1.

petition, or sufficiently wearied so as to give up. At some point, elected officials must be left to govern and be held accountable by regular electoral processes.

If the Utility Tax could be referred, as UTA contends, the same result would be required for a budget ordinance or amendment or change in a tax rate. There is no significant difference between a "new tax", enacted under limits provided by statute, and a significant change in an existing tax. Any governmental decision affecting the type of tax scheme, the amount of revenue and the rate at which the tax levy will be imposed would all be referable to the voters. This type of interference in a city's appropriation process would create chaos in the fiscal affairs of Utah's counties and towns, as the entire budgeting process for these entities would be held in abeyance until completion of the referendum process and even then it may not be decided if subjected to successive referendum petitions. Critical budget items would thus be delayed far beyond the various deadlines required by statute to be met during the budget year.

A. The Plain Meaning of "Any Budget or Tax Levy" Includes all the Elements of a Local Government's Plan to Raise Sufficient Revenue to Meet Estimated Expenditures.

The phrase "budget or tax levy" used in section 20-11-21(2)(b) indicates a concern of the legislature with municipal financial operations generally. UTA's attempt to focus solely on the tax levy aspect of section 20-11-21(2)(b) distorts the meaning of the section taken as a whole. "The meaning of a part of an act should harmonize with the purpose of the whole act. Separate parts of an act should not be construed in isolation from the rest of the act." Jensen v. Intermountain Health Care, Inc., 679 P.2d 903, 906 (Utah 1984).

The Utah Supreme Court has consistently held that "[w]here statutory language is plain and unambiguous, this court will not look beyond to divine legislative intent. Instead, we are guided by the rule that a statute should be construed according to its plain language." Allisen v. American Legion Post No. 134, 763 P.2d 806, 809 (Utah 1988), see also Bd. of Educ. of Granite School Dist. v. Salt Lake County, 659 P.2d 1030, 1035 (Utah 1983).

The Uniform Fiscal Procedures Act, Title 10, Chapter 6 of the Utah Code, sets forth a detailed statutory scheme for cities to follow in preparing budgets. That Act defines a "budget" as "a plan of financial operations for a fiscal year and the proposed means of financing them." Utah Code Ann. § 10-6-106(10) (1986) (emphasis added). Further, Utah Code Ann. § 10-6-110 sets forth the required contents of a city's budget, including estimates of anticipated revenues and appropriations for expenditures. A tax, such as Payson's utility tax, is an anticipated revenue that must be included in the budget as required by this statute. See also, Black's Law Dictionary 176 (5th ed. 1979). ("Budget . . . A plan for the coordination of resources and expenditures. The amount of money that is available for, required for, or assigned to a particular purpose.") Thus, a "budget" is a composite of all of the planning, estimating, coordinating and related activities inherent in formulating the fiscal plan for a local governmental entity. Such a city budget must, inevitably, include taxes. Individual taxes may, of course, be formally enacted separately from budget ordinances, but the enactment of taxes is integral to the management of municipal affairs and cannot be considered in a vacuum from other

revenue sources and from expenditures without creating chaos. This is recognized by the tandem exclusion of "budget or tax levy" in the referendum statutes.

B. The Plain Meaning of the Phrase "Tax Levy" Includes the Meaning Most Commonly Used for that Term in the Utah Code, Namely the Imposition or Exaction of a Tax.

UTA argues that the terms "budget" and "tax levy" in section 20-11-21(2) refer solely to the ministerial processes associated with administering a budget or setting a mill rate for purposes of property taxation, thus excluding from the meaning of those terms appropriating money for a budget, enacting a new taxing scheme or setting a tax rate. (Appellants' Brief 26.) UTA's view is inconsistent with the plain meaning of those terms, is inconsistent with the most recent amendment of the statute and is contrary to the conclusion reached through the proper application of the rules of statutory construction. Examples of tax levies are found throughout the Utah Code and demonstrate that the term includes much more than simply calculating the property tax mill levy, as UTA asserts (Appellants' Brief 30.)[11]

For example, Utah Code Ann. § 10-2-506 discusses certain court-ordered levies and states: "Any tax levy so ordered by the court shall be levied by the board of county commissioners. . . ." (emphasis added). Further, Utah Code Ann. § 10-3-1214, addressing taxes in a council-mayor form of government specifies: "[e]very ordinance or tax levy passed by the council shall be presented to the mayor . . . ." (emphasis

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[11]See e.g., Utah Const. art. VI., § 28; art. XIII, § 9; art. XIII, § 10; art. XIV, § 8; Utah Code Ann. §§ 10-2-612, 10-6-133, 10-7-14.2, § 10-8-4, 11-14-19, 11-14-19.7, 17-4-7, 17-4-14, 17-5-62, 17-5-69, 17-36-37, 17-37-5, 17-38-1, 17A-2-308, 37-2-1, 53A-2-103, 63-11-19.1, 63-32-61, 63-32-101, 63-57-7, 63-59-6, 63-64-7, 63-65-3, 63-66-6, 63-67-107, 63-69-7, 63-74-7, 73-10a-10, 73-24-7, 77-32-7.

added). Utah Code Ann. § 10-1-203 states "the governing body of a municipality may raise revenue by levying and collecting a license fee or tax. . . ." (emphasis added). Utah Code Ann. § 59-12-203 provides that "any county, city or town may levy a sales or use tax under this part."

The following quotation from a leading treatise on municipal law provides further support for the meaning of "tax levy":

> It is elementary that there can be no tax until there is a levy. Although various definitions have been announced by the courts, a succinct definition of a tax levy is that it "is the formal vote or action of the body authorized to make the levy. It has been defined as "the formal and official action of a legislative body determining and declaring that a tax of a certain amount, or of a certain percentage on value, shall be imposed on persons and property subject thereto." To levy a tax is to determine by vote the amount of taxes to be raised. The levying of taxes is not merely the ministerial action of ascertaining the rate percent.

15 E. McQuillan, The Law of Municipal Corporations, 320 (3rd ed. 1989)(emphasis added; citations omitted); see also Black's Law Dictionary 1308 (5th ed. 1979) ("Tax levy. The total sum to be raised by a tax. Also the bill, enactment, or measure of legislation by which an annual or general tax is imposed.")

C. The Legislature Intended to Broaden the Scope of the Statute by Substituting "Tax Levy" for "Mill Levy."

UTA discussed briefly the various amendments to the referendum statute. (Appellants' Brief 34-35.) Prior to the most recent amendment of the act, exclusions from direct legislation by the electorate included budgets, mill levy and zoning ordinances. The legislature then amended the statute to exclude budgets and tax levies. "Tax levy" was substituted for "mill levy." If the legislature intended to limit the right of direct legislation to mill levy, as assumed by UTA, then it could have preserved the

then existing language. Instead, it advisedly substituted "tax levy" for "mill levy." It is required that courts "assume that each term of a statute was used advisedly; and that each should be given an interpretation and application in accord with their usually accepted meaning, unless the context otherwise requires." DeLuca v. Department of Employment Security, 746 P.2d 276, 278 (Utah App. 1987). It is also "presume[d] that a significant change in the words of the statute by the Legislature was intended to effectuate a change in interpretation." RDG Associates/Jorman Corp. v. Industrial Commission of Utah, 741 P.2d 948, 951 (Utah 1987).

D. Speeches from the Floor of the Legislature Evidence a Legislative Intent to Exclude Mill Levies and Other Tax Levies from the Referendum Process.

In an effort to restrict the plain meaning of the statute, UTA relies on selected statements from the sponsor of the bill which amended the statute, Senator Finlinson. It is not necessary to resort to statements made in legislative debate in this case because there is no ambiguity in the statute. "There is nothing to construe where there is no ambiguity in the statute." Cox Rock Products v. Walker Pipeline Construction, 754 P.2d 672, 676 (Utah App. 1988). Nevertheless, the legislative debates indicate an intent to exclude mill levies and other tax levies from the referendum process. Assuming that Senator Finlinson did not change his mind after making the statements cited by UTA, then the majority of the legislature disagreed with Senator Finlinson even though he was the sponsor of the bill. Senator Rogers proposed an amendment which was adopted by the legislature. His amendment was the provision that substituted "tax levy" for "mill levy." Senator Rogers summarizes his amendment as follows:

> If I can sum up, again what I would like the body to approve here, is the clear, explicit setting aside of budgets and mill levies and tax levies, from being able to be encroached upon through referendum. (Emphasis added.)

(R. 40.) Senator Rogers intended both mill levies and other tax levies to be covered by the phrase "tax levy." Senator Finlinson resisted the amendment. (R. 40-41.) It was Senator Rogers' version that was adopted by a vote of twenty to seven by the Senate. (R. 40.)[12]

The trial court determined that the Utility Tax was a "new tax scheme" and relied on Brooks v. Zabka, 168 Colo. 265, 450 P.2d 653 (1969), to support its claim. UTA's and the district court's reliance on Brooks is misplaced. In that case, the Colorado Supreme Court was asked to determine whether a newly-enacted sales tax was the tax levy referred to in the following provision of the Greely City charter:

> [T]he referendum shall apply to all ordinances passed by the Council, except ordinances making the tax levy [and] making the annual appropriation.

Id. 450 P.2d at 655 (emphasis added). The Colorado court concluded that the phrase "the tax levy" was limited to the mill levy because all references in the city charter to "tax levy" were related to the mill levy. Utah is significantly different. Here, "tax levy" is used in connection with several different types of taxes which are unrelated to mill levies. Furthermore, the Brooks court concluded that use of the limiting article "the" was intended to limit "tax levy" to a particular tax. The court said "[h]ad the drafters

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[12]The legislative debate demonstrates that the Senate heard testimony concerning the variety of policy concerns inherent in the bill. (R. 42-44.) The legislature resolved the policy concerns by adopting the Rogers' amendment which excluded "tax levy" from the referendum process.

. . . intended the exception from referendum to apply to all tax levies, they needed only to use words to that effect . . . [such as] "a", "all" and "other" . . . ." Id. 450 P.2d at 655 (emphasis original). The Utah drafters did just that; they used "any" in connection with "tax levy." The legislature intended that tax levy mean more than the ministerial calculation of mill levy.

IV. Exclusion of Tax Levies from Referendum is Consistent with Applicable Constitutional Provisions

Article VI, Section 1 of the Utah Constitution discusses legislation through initiatives and referenda:

> The legal voters or such fractional part thereof as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect.

Utah Const., art. VI, § 1 (emphasis added).

While this court has not addressed the question explicitly, other decisions of the court make it clear that this provision is not self-executing. See In re Montello Salt Co., 53 P.2d 727, 729 (Utah 1936).[13] "A constitutional provision which is not self-executing

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[13]The court has found statutes to be not self-executing even when they lack the phrase "as may be provided by law". Anderson v. Cook, 130 P.2d 278 (Utah 1942). Generally, other states which have examined referendum and initiative provisions in their constitutions have found that they are not self-executing, unless the constitution expressly makes the provisions self-executing. See, e.g., Idaho State AFL-CIO v. LeRoy, 718 P.2d 1129, 1134 (Idaho 1986) (the court, interpreting art. III, § 1 of the Idaho Constitution, a provision similar in this respect to Utah's, stated that "this right of referendum is not self-executing . . . and, in fact, was dormant and inoperable for 21

remains inoperative until rendered effective by supplemental legislation." 16 C.J.S. Constitutional Law § 46 (1984). The legislature could have chosen to leave the right of referendum dormant by not enacting Chapter 11 of Title 20, or its equivalent. What the legislature could have withheld altogether, it can withhold in part. Instead of not enacting any enabling legislation, the legislature has chosen to enable initiative and referendum under conditions, one of which is embodied in Section 20-11-21. This section is thus consistent with the language of art. VI, § 1.

Of the thirteen state constitutions which make provision for initiative and referendum at the local level,[14] Utah's is the only one which includes the phrase, "under such conditions . . . as may be provided by law" (emphasis added). This goes beyond the "time, place and manner" concept which might be read into the words "in such manner and within such time as may be provided by law", if they stood alone. It cannot be presumed that the word "conditions" is redundant. Indeed, this court, speaking unanimously on this point, has said that the phrase "upon such conditions as may be established by the legislature" found in Utah Const. art. VII, § 12, relating to the Board of Pardons, specifically authorizes the legislature to place substantive limits on powers of the Board of Pardons found in the constitution. State v. Bishop, 717 P.2d 261, 264 (Utah 1986). Under the virtually identical language of article VI, § 1, the legislature has

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years until 1933 when the legislature passed Chapter 18 of Title 34 of the Idaho Code." (emphasis in original); see, also Russell v. Linton, 115 N.E. 2d 429 (Ohio Ct. Common Pleas 1953).

[14]Arizona, Arkansas, Colorado, Illinois, Maine, Montana, Nevada, Ohio, Oklahoma, Oregon, South Dakota, Utah and Wyoming.

the power to restrict the subject matter of local initiative and referendum, as it has done in Section 20-11-21(2).

A. The Utah Constitution Requires that Tax Levies be Excepted from the Right of Referendum.

The Utah Constitution requires that the legislature confer on cities the power to levy, assess and collect taxes within limits prescribed by general law. Article XI, Section 5(a). The limit placed on this power in the case of Payson City's Utility Tax is contained in Section 11-26-1. The constitution further provides that the "legislature shall not impose taxes for the purpose of any . . . city . . ., but may, by law, vest in the corporate authorities thereof . . . the power to assess and collect taxes for all purposes of such corporation." Utah Const. art. XIII, § 5 (emphasis added). The framers of the constitution thus wisely provided for the orderly provision and management of revenues and budgets for municipal purposes.

Corporate authorities are "those municipal officers who are either directly elected by the population to be taxed or appointed in some mode to which they have given their assent." State ex rel. Wright v. Standford, 24 Utah 148, 66 P. 1061, 1063 (Utah 1901). In the case of Payson City, these authorities are the City Council. Utah Code Ann. § 20-11-21(2)(b), insofar as it relates to municipal taxing power, is thus not merely permissible under the Utah Constitution, but required, as the taxing power of cities was granted, if at all, to the corporate authorities of the city and not to the people thereof. As the court said in Standford, "In our opinion section 5, art. 13, of the constitution, not only limits local . . . taxation to local . . . purposes, but it was also intended as a limitation upon the power of the legislature to grant the right or impose the duty of . . .

levying a tax to any person or body other than the corporate authorities of the county." Id. at 1063 (emphasis added). The United States Supreme Court, in the case of City of Quincy v. Cooke, 107 U.S. 549, 554 (1883), recognized that "the city council, and not the voters, of an incorporated city were its corporate authorities" for purposes of a similar constitutional provision in Illinois.

UTA cites Citizens for Financially Responsible Government v. City of Spokane, 662 P.2d 845 (1983), which is distinguishable from the case at hand for several reasons. First, Spokane does not deal with a constitutional right of referendum, but is concerned with a city charter provision which embodies an absolute and unconditional right of referendum and initiative. Id. at 847-48. Second, the Washington court was not asked to strike down a state statute. If there had been a state statute in conflict with the city charter, the state statute would have prevailed. Id. at 848. Third, in interpreting a constitutional provision worded similarly, but not identically, to Utah Const. art. XIII § 5, it followed established Washington precedent, which differs from Standford, supra. The Utah Supreme Court has stated that what the constitution has expressly given to the corporate authorities of a city may not be usurped by the people through initiative or referendum. Dewey v. Doxey-Layton Realty Co., 3 Utah 2d 1, 277 P.2d 805, 807 (1954), citing Lindsley v. Dallas Consol. Street Ry. Co., 200 S.W. 207 (Tex. Civ. App. 1917); Newsom v. Board of Supervisors of Contra Costa County, 205 Cal. 262, 270 P. 676 (1928). See also Alexander v. Mitchell, 119 Cal. App. 2d 816, 260 P.2d 261 (Cal. App. 1 Dist., 1953). The Washington Court was compelled by its precedents to rule as it did; Utah has different underlying law.

Finally, the Spokane holding was "virtually dictated by the language of the charter", id. at 850, which referendum language is not conditioned on legislative limits, as in Utah, but was absolute in its character.

The Utah Supreme Court has long recognized the importance of tax levies to small government and the fact that small governments have exclusive authority to levy taxes. In The Best Foods, Inc. v. Christensen, 75 Utah 392, 285 P. 1001, 1003 (1930), the court stated:

> There can be no doubt but that the framers of our state Constitution recognized the rights of the people of Utah to local self-government. It was to preserve local self-government free from needless legislative interference that the power to levy taxes for local purposes was by the state Constitution vested exclusively in the proper authority of counties, cities, towns, and other municipal corporations. (Emphasis added.)

If the voters were able to vote on and defeat those taxes enacted within the limitations and procedures provided by the legislature pursuant to article XI, Section 5(a) of the Utah Constitution, Payson would be deprived of its constitutional authority to levy a tax. More importantly, as a practical matter, it would be deprived of its tools to timely and surely provide for revenues for ongoing municipal operations and projects. Voters are not left without a remedy if they are subjected to an unpopular tax, inasmuch as voters may elect representatives who can repeal that tax in the course of providing and funding a comprehensive budget.

UTA argues that "experience shows that laws relating to tax schemes are legislative acts that are subject to initiatives and referenda" and relies on the prior state tax initiative attempts for support. (Appellants Brief 21-22.) First, there is no evidence in the record of the nature and scope of such attempts. Second, whether the executive

of the state allowed or disallowed the attempts is not a judicial determination of the scope and meaning of the constitutional provision. Third, UTA's reliance on state initiative attempts ignores the distinctions made in article VI, § 1 of the Utah Constitution between state government and local government, the statutory distinction made by Utah Code Ann. § 20-11-21, and does not address article XI, § 5(a) and article XIII, § 5 which relate to and protect local governmental entities.[15] For these reasons, reference to state initiative provisions or practices as a guide for interpreting some important provisions applicable to local government is inappropriate.

B. The Rights of Initiative and Referendum are not Unlimited and do not Apply to Payson's Utility Tax.

Although the Utah Constitution provides for the referral of certain matters to the people for a vote, the Utah Supreme Court has held that such a right is not unlimited. UTA mistakenly argues that the only exception to the right to refer legislation is for narrowly defined administrative acts. In Dewey v. Doxey-Layton Realty Co., 3 Utah 2d 1, 3, 277 P.2d 805, 807 (1954), this court, in a case construing the right of property owners to initiate a residential rezoning ordinance, stated that with respect to initiative and referendum petitions "the line drawn between administrative and legislative functions

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[15]The legislature has never exercised its rights to condition the initiative and referendum power at the state level, but rather, has implemented it to the fullest extent. See Utah Code Ann. §20-11-1. In addition, in enacting Chapter 11 of Title 20, Utah Code Ann., the legislature made operative article VI, § 1. In doing so, the legislature provided no subject matter limitations with respect to the state. However, with respect to local governments, the legislature provided some restrictions, as contained in Utah Code Ann. §20-11-21. The legislature may avoid any referendum by enacting legislation by the two-thirds majority necessary for immediate effect. This method is not open to local governing bodies.

is not the only limitation recognized by the courts as to the applicability of direct legislation to particular ordinances."

The court then cited the following cases, which are analogous to the instant case, to support its conclusion that initiative and referendum provisions are not intended to apply to all acts of a governmental body and are also limited by sound policy concerns:

> In State ex rel. Keefe v. City of St. Petersburg, 106 Fla. [sic] 756, 145 So. 175 (1933), it was held that the referendum provisions were not intended to apply to appropriation ordinances required by state law, for the reason that to hold otherwise would make operation under the budgetary system, provided for by the charter, impossible and because matters of financial management were peculiarly within the special knowledge of responsible city officials. Other appropriations and tax levying ordinances have been held to be outside the operation of referendum provisions in Denman v. Quin, Tex. Civ. App., 116 S.W.2d 783, (tax levying under state law provision held to be merely administrative; also, the technical nature of the subject matter precluded operation of the referendum); Burkett v. Youngs, 135 Me. 459, 199 A. 619 (assessment of taxes was held not to be subject to referendum as being a matter of concern affecting the state as a whole and not solely municipal in character) and Swain v. Fritchman, 21 Idaho 783, 125 P. 319 (the fact that the statute provided that tax levy ordinances were to take effect immediately indicated that such ordinances were intended by the legislature to be excluded from the provisions of the referendum).

Id. 277 P.2d at 807 (emphasis added). Several of those exceptions are applicable in this case.

1. Financial enactments, including the Payson Ordinance, are not subject to referendum.

In the context of the tax measures in a city's budget scheme, the Florida Supreme Court in the St. Petersburg case, reconciled two provisions in St. Petersburg's city charter. The first provision permitted a referendum vote as to city ordinances. The other provision gave the city power to enact a tax for appropriations made by the city

council in the context of the city's budgetary process. The following quotations illustrate the court's opinion that the city's referendum provisions did not apply to appropriation measures adopted in furtherance of the city's budget process. The same reasoning applies by analogy to the application of Utah constitutional referendum provisions to Payson's taxing power in the instant case.

> To comply with the true intent of the statute in so far as the budgetary plan is concerned, requires municipal action based on the determination by the city's officials of its available resources and indispensable financial requirements. To hold that the initiative and referendum provisions of the charter are applicable to appropriation ordinances, would materially obstruct, if not entirely defeat, the purpose of having a budget system.
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> . . .
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> It would be unreasonable, indeed, to suppose that the Legislature would require the responsible officials of the city to proceed with care and deliberation to prepare a budget in keeping with the financial needs of the city, and then subject the resultant financial arrangement evolved therefrom to a popular referendum election, in which few, if any, of the special factors, which have been studied by competent officials in connection with preparing such an arrangement, would be given that thorough investigation and consideration necessary to make any form of budgetary plan operative. A budget system means sound fiscal management of municipal affairs, by requiring all expenditures, through appropriations, to be predicated on a proper understanding and appreciation of all the pertinent facts which may be ascertained with reference to the advisability of making the same.
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> We are fortified in the view we take of the situation presented in this case, by the fact that the subtitle of section 8 of the charter of the city of St. Petersburg is denominated: "Direct Legislation by the People." The reference to "legislation" as used in this section of the statute, when considered in connection with the general plan of governmental operation being set up, could not have been intended to embrace those matters of financial management, which, while legislative in their character, are such as are impliedly, if not expressly, required by the charter to be dealt with by the city's responsible officers on the basis of peculiar and special knowledge possessed by them concerning the possible resources of the

city, and the necessities required to be met through the exercise of the delegated power of taxation.

St. Petersburg, 145 So. at 176.

If UTA's argument that taxes should be subject to referendum is accepted, the care and deliberation currently exercised to develop both the expense and revenue sides of budgets in connection with the financial needs of cities would become subject to a popular vote, wherein few if any of the complex factors studied by city officials would be given the time and investigation required to make city budgets operative. The Utah Supreme Court in the Dewey case, by reference to the St. Petersburg case, recognized that appropriation ordinances cannot be referable whether administrative in character or not. Equally, the taxation measures which provide the revenue integral to the budget process are not referable. The Payson Ordinance is just such a measure.

In Denman v. Quin, 116 S.W.2d 783, 786 (Tex. Civ. App. 1938), cited with approval by the Utah Supreme Court in Dewey, the court pointed out that the technical nature of the city budget and levying an ad valorem tax to help meet the city budget, resting as it did upon minute investigation of facts and figures and the application of expert and skilled knowledge in municipal affairs, precluded the operation of a referendum. Id. at 786. Denman is discussed in more detail below. The Utah Supreme Court again recognized this principle that ordinances which are the result of "persons having specialized training and experience" are administrative in nature in Shriver v. Bench, 6 Utah 2d 329, 313 P.2d 475, 478 (1957).

The setting of a city budget and raising the necessary revenues through taxing and other measures to meet the budget is a complex process which requires decisions by

persons who have specialized training and experience in municipal affairs. City officials are required, inter alia, to identify the necessary city expenditures and obligations, estimate the operating expenses for water systems and other city owned and operated utilities, set departmental budgets, etc. (R. 103-06.) The mirror image of the expense side of the budget is the revenue side which is equally as diverse and complex and which requires city councils to decide the most efficient and fair taxes to raise funds sufficient to cover the budget. It can be readily seen from the foregoing that the whole of the budgetary process, every part of which must be weighed against and be consistent with every other part and all of which must be done within practical and statutory time constraints, is intertwined and complex. It simply is not practical for the public to give it sufficient time and attention to make the proper determinations regarding budget and revenue matters. As properly stated by the Utah Supreme Court in Shriver, if the result of permitting a referendum would be to impair the efficient administration of the municipality, courts should tend toward the conclusion that referendum provisions are not applicable. Id. 313 P.2d at 478.

2. The utility tax is one of state-wide concern and not solely municipal in character.

The Utah Supreme Court in Dewey acknowledged the exception to referendum discussed in Burkett v. Youngs, 135 Me. 459, 199 A. 619 (1938): taxes are of statewide concern and are not referable. Regulation of public utilities and of matters connected therewith are plainly matters of statewide concern. See, e.g. Utah Code Ann. § 59-2-201(1)(b) (State Tax Commission, not county assessor, assesses property of utilities) and Utah Code Ann., Title 54 (regulation of utilities by the State of Utah).

More specifically, a tax on the gross revenues of an entity or individual providing utility services is a tax of state wide concern as evidenced by Utah Code Ann. § 11-26-1 et seq. That chapter specifically limits a municipality's ability to tax such concerns. Utah Code Ann. § 11-26-1 allows a municipality to collect a tax of up to six per cent of the gross revenues of such an enterprise without placing the issue before the electorate. Utah Code Ann. § 11-26-2 allows a municipality to exceed the six percent limit, but only if approved by a majority of the voters of the municipality. Thus, the state legislature has already approved a municipal tax on the gross revenues of such utilities of up to six per cent. Under the legislative scheme for regulating and taxing utilities, the only right the electorate now has to challenge such a tax is if a municipality elects to exceed the six per cent limit. Any referendum concerning a tax within the six per cent limit is now too late; it should have been filed in connection with the passage of Chapter 26 of Title 11.

3. The enactment of the Utility Tax by Payson was an administrative act, and thus was not subject to the referendum provision of the Utah State Constitution.

The Utah Supreme Court has stated that ordinances which are the result of "persons having specialized training and experience" are administrative in nature. Shriver, 313 P.2d at 478 (1957). The revenue and expense sides of the budget process are inseparable. Matters of financial management are peculiarly within the special knowledge of city officials. (R. 103-06.)

A close analysis of the policy and cases discussing the administrative-legislative distinction, illustrate that the ordinance enacted by Payson City is an

executive-administrative act relating to a budget and to a tax levy, and thus, is not subject to referendum.

> [I]t is obvious the system of budgetary control set up in the act could not, and would not, be operative for the purpose for which it was designed, if every budget appropriation ordinance, prepared after weeks of study and adjustment of its provisions, could be rendered ineffective by being subject to revision upward or downward, according to the hazard of a municipal election, or so delayed in its taking effect, that the interest of the city would financially suffer thereby.

St. Petersburg, 145 So. at 176.

The Utah Supreme Court in Keigley v. Bench, 97 Utah 69, 89 P.2d 480 (1939), set forth three tests to distinguish between legislative and administrative acts. Specifically, the court stated that the power to be exercised is legislative if the ordinance is one making a new law, whereas, it is administrative if it merely pursues a law already in existence. Id. at 484, citing, Whitebeck v. Funk, 140 Or. 70, 12 P.2d 1019 (1932). Similarly, an act or ordinance which constitutes a declaration of public purpose and making provisions for the ways and means of its accomplishment is generally legislative as distinguished from an act or ordinance which merely carries out a public purpose already declared. Id., citing, State ex rel Boynton v. Charles, 136 Kan. 875, 18 P.2d 149 (1933). Finally, the court noted that actions relating to subjects of a permanent or general character are legislative, whereas, those that are temporary in operation and effect are administrative. Id., citing, Monahan v. Funk, 137 Or. 580, 3 P.2d 778 (1931).

Applying these tests to the Payson Ordinance demonstrates that the ordinance is administrative in nature and falls outside of the referendum power. First, Payson City

did not enact a new tax scheme in levying the Utility Tax as suggested by UTA; it merely implemented authority already granted to it by the State Legislature in article XI, Section 5(a) of the Constitution which grants taxing power to municipalities. Moreover, the fact that the tax was implemented within the statutorily prescribed limits (6%) as required by Utah Code Ann. § 11-26-1, illustrates that the ordinance was enacted pursuant to an existing statutory scheme.

The case of Denman v. Quin, 116 S.W.2d 783 (Tex. Ct. App. 1938) is on point on this issue. In Denman, the City of San Antonio enacted an ordinance levying an ad valorem tax of $1.90 on the $100 property valuation. The tax was levied pursuant to article 3 of the city charter which granted the Board of City Commissioners the power to annually levy and collect an ad valorem tax not to exceed $2.25 in any one year. Plaintiffs and other tax paying voters of San Antonio brought an action to compel, by mandamus, the city to proceed under the provisions of Section 131 of the city charter to enable voters to initiate a referendum to "veto" the ordinance.

The court rejected the mandamus petition and held that the right of referendum was not intended to apply to every ordinance, but only to those legislative in character. Id. at 786. In reaching this conclusion the court stated:

> It seems obvious that when the ordinance in question here is tested by the rules stated, it falls at once into the class of ordinances which are not deemed referable to a vote of the people. It is in no sense a declaration of a new policy or purpose, or a permanent or general law for the guidance of the public or their officers or agents, or authorizing the expenditure of public funds for any purpose not previously fully authorized by law. It is, rather, an ordinance putting into execution previously-enacted laws authorizing the levy of taxes for the payment and servicing of existing contractual obligations of the city, and the maintenance and operation of the affairs and business of the municipality.

Id. (emphasis added).

The right of referendum in Utah is equivalent to the referendum right granted to the citizens of San Antonio in its city charter. Moreover, Payson City had authority by statute and under the Constitution to enact the Utility Tax, as long as the amount of the tax was within the statutory cap. Additionally, the tax was levied for the public purpose of funding necessary city projects and services. All that remained for Payson City was the administrative duty of levying the appropriate tax which, with all other revenue sources available, would be sufficient to meet the city's public purposes and contractual obligations.

Second, the ordinance enacted by Payson City did not declare a new public policy. Id. It merely enacted a tax to accomplish a public policy which already existed; i.e., to fund or assist in the debt service of capital construction projects approved by official action of the Payson City Council.

Third, the ordinance is not necessarily permanent nor is it a general law as suggested by UTA. Id. Rather, the Utility Tax was enacted for the limited purpose of financing capital construction projects. Section 5 of the ordinance states:

> All revenues derived from the Utility Revenue Tax established by this ordinance shall be accounted for in a special capital projects construction fund to be used exclusively for funding or assisting in the funding of capital construction projects or for funding or assisting in the funding of debt service associated with capital construction projects approved by official action of the City Council for such funding assistance.

(R. 57.)

V. UTA has no Independent Federal Constitutional Right of Referendum for Municipal Ordinances

UTA cites the U.S. Supreme Court case of Meyer v. Grant, 486 U.S. 414 (1988) for the proposition that "statutes that limit the power of the people to initiate legislation are to be closely scrutinized and narrowly construed so as to preserve the peoples right to petition the government." (Appellants' Brief 37.) However, the only issue before the Supreme Court was stated as follows:

> In Colorado the proponents of a new law, or an amendment to the State Constitution, may have their proposal placed on the ballot at a general election if they can obtain enough signatures of qualified voters on an "initiative petition" within a six-month period. One section of the state law regulating the initiative process makes it a felony to pay petition circulators. The question in this case is whether that provision is unconstitutional.

Id. at 415-16 (emphasis added). The court did not address whether citizens of state and municipal governments had a constitutional right of referendum and initiative. However, that issue was addressed by the Tenth Circuit.

The majority of the Tenth Circuit in the underlying case of Grant v. Meyer, 828 F.2d 1446 (10th Cir. 1987), held that the Federal Constitution does not independently grant citizens a right to such direct legislation. Id. at 1455. The dissent explained that the Federal Constitution would apply to such a right only to the extent of the right granted by the states. Id. at 1461. Thus, UTA's so-called federal right to refer the Ordinance is dependent. If Utah does not provide a right to refer a tax such as the Utility Tax, then the U.S. Constitution does not provide or protect such a right. Because

such a right does not exist under Utah law or its Constitution, UTA does not have a federal right to refer the tax and the section 1983 claim must be dismissed.[16]

UTA quotes the Meyer decisions for the proposition that its right of free speech has been impaired. First, that right is derivative as explained above. Second, UTA's right to free speech was not impaired and no evidence to support such a position was presented to the trial court. The evidence presented to the trial court in Meyer demonstrated "that the available pool of circulators is necessarily smaller if only volunteers can be used." Meyer, 486 U.S. at 419. Based on this record, the court held the absolute ban on compensation of solicitors was an unconstitutional interference with the right to free speech for the following reasons:

> It impedes the sponsors' opportunity to disseminate their views to the public. It curtails the discussion of issues that normally accompanies the circulation of initiative petitions. And it shrinks the size of the audience that can be reached.... In short, like the campaign expenditure limitations struck down in Buckley, the Colorado statute imposes a direct restriction which 'necessarily reduces the quantity of expression....'

Id.

Not only did the offending statute in Meyer restrict the quantity of speech, the criminal provision also created a prior restraint. Neither exists in this case. As explained above, nothing prohibited UTA from circulating its own petition or expressing its political viewpoints in any way. "While the First Amendment does not guarantee the right to employ every conceivable method of communication at all times and in all

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[16]Even if such a right did exist under Utah law, it did not exist after UTA failed to preserve its "right" by timely submitting a sufficient petition regarding the Utility Tax.

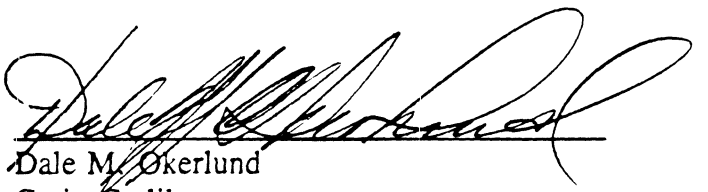
places, . . . a restriction on expressive activity may be invalid if the remaining modes of communicating are inadequate. . . ." Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 812 (1984). There is nothing in the record to suggest that UTA's remaining mode of communicating its political viewpoints concerning the Utility Tax were inadequate.[17] The core of UTA's complaint is that Payson, acting pursuant to statute, did not cooperate with UTA in the way UTA thought proper. Payson's cooperation was not necessary for UTA to preserve or enjoy any rights it may have had or to communicate any viewpoint. Therefore, UTA's § 1983 claim was appropriately dismissed as was the claim for attorneys' fees.[18]

CONCLUSION

For the foregoing reasons and pursuant to the authorities cited herein, the district court's decision to dismiss all of UTA's claims should be affirmed.

DATED this 11th day of May, 1992.

RAY, QUINNEY & NEBEKER



Dale M. Okerlund
Craig Carlile
Attorneys for Payson City
and Glen K. Vernon

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[17]The trial court never addressed this issue. UTA never submitted any evidence that their right of free speech was in any way impaired.

[18]Attorneys' fees under 42 U.S.C. § 1988 are allowed only if the plaintiff prevails and even then they are allowed at the discretion of the court.

ADDENDUM

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

****

CLARK BIGLER et al,

Plaintiff,

vs.

GLEN K. VERNON et al,

Defendant.

CASE NUMBER: 900400796

MEMORANDUM DECISION

****

The Court having reviewed the memoranda, and arguments presented in this case finds that Article VI, Section 1, of the Utah Constitution governs this case. Article VI requires that "legal voters...under such conditions and in such manner and within such time as may be provided the law, may initiate any desired legislation ... before such law or ordinance shall take effect." In this case, plaintiffs' did not initiate such a vote before the ordinance took effect as required by Article VI, Section 1, and Section 20-11-21 UCA, therefore their actions were not timely taken. Plaintiffs' failure to file the petition in thirty days as required by Statute, and the Constitution precludes their claim.

The Court finds that had plaintiffs acted in a timely fashion they could have brought this claim, as this was a legislative not administrative manner. The Court notes further

that this was not a "tax levy" written in the usual context, but rather that it was an entirely "new scheme of taxation" and that the creation of a tax is a legislative matter and is therefore an appropriate subject matter for referendum. Brooks V. Zabka, 168 Colo. 265, 450 P.2d 653 (1969).

The Court finds that while defendants should have given plaintiffs the petition, plaintiffs, according to the Constitution, should have taken appropriate action either to compel the petition be given to plaintiffs or prepared their own within the proper time limit, as in the Palmer Case. Palmer V. Broadbent, 260 P2d.581 (Utah 1953).

Counsel for the plaintiff to prepare Summary Judgment within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

Dated this 6th day of November, 1991.

BY THE COURT:

RAY M. HARDING, JUDGE

cc: Mark Buchi, Esq.
Craig Carlile, Esq.

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

****

CLARK BIGLER et al,

Plaintiff,

CASE NUMBER: 900400796

vs.

GLEN K. VERNON et al,

MEMORANDUM DECISION

Defendant.

****

The Court having reviewed the Memorandum Decision dated November 6,1991, finds that it erred in the last paragraph and that it should read: "Counsel for the defendant shall prepare Summary Judgment within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court."

Dated this 13th day of November, 1991.

BY THE COURT:

RAY M. HARDING, JUDGE

cc: Mark Buchi, Esq.
Craig Carlile, Esq.

DALE M. OKERLUND
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92 North University Avenue
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Telephone: (801) 226-7210
Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY

STATE OF UTAH

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CLARK BIGLER et al,	:	SUMMARY JUDGMENT
Plaintiff,	:	
v.	:	
GLEN K. VERNON et al,	:	Case Number: 900400796
Defendant.	:	

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This matter came before the Court on cross-motions for summary judgment. Oral argument on the motions was held on October 4, 1991. Based upon the arguments of counsel, the memoranda on file and the authorities cited therein, the Court issued its Memorandum Decision dated November 6, 1991, as amended on November 13, 1991, wherein the Court found that plaintiffs' claims were time-barred by Utah Code Ann. § 20-11-21 and Article VI, Section 1 of the Utah Constitution, and that defendants' conduct was not such as to estop defendants from raising the defense of time-bar.

Accordingly, JUDGMENT IS HEREBY entered in favor of defendants and against plaintiffs on all claims, each party to bear its own costs and attorneys' fees.

DATED this 2 day of Dec, 1991.

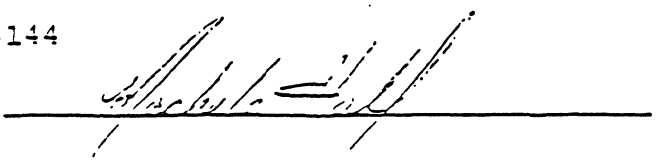
BY THE COURT:

RAY H. HARDING
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of November, 1991, a true and correct copy of the foregoing Summary Judgment was hand delivered to:

Mark Buchi, Esq.
David J. Crapo, Esq.
HOLME, ROBERTS & OWEN
50 South Main, #900
Salt Lake City, Utah 84144



[6625W]
DMO-982

IN THE FOURTH JUDICIAL DISTRICT COURT

UTAH COUNTY, STATE OF UTAH

****

CLARK BIGLER,

Plaintiff,

CASE NUMBER: 900400796

vs.

GLEN K. VERNON,

MEMORANDUM DECISION

Defendant.

****

The Court having received plaintiff's Motion to Rule on All Claims Presented In the Motion for Summary Judgment, and defendant's Motion to Strike plaintiff's Motion to Rule on All Claims Presented in the Motion for Summary Judgment has considered the motions. The Court will deny plaintiff's motion finding that if it is a motion to reconsider the issues upon which this court has already ruled, it is not a motion which exists under our rules. Drury v. Lunceford 415 P.2d 662 (1966). In the alternative, if the motion is to rule on all claims, the Court finds that its finding that plaintiff's claims were time barred renders the other independent issues before the court moot.

Counsel for the defendant to prepare an order within 15 days of this decision consistent with the terms of this memorandum and submit it to opposing counsel for approval as to form prior to submission to the Court for signature. This memorandum decision has no effect until such order is signed by the Court.

Dated this 16th day of December, 1991.

BY THE COURT:

RAY M. HARDING, JUDGE

cc: Craig Carlile, Esq.
Mark Bucchi, Esq.

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Telephone: (801) 226-7210
Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY
STATE OF UTAH

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CLARK BIGLER, et al.,	:	
Plaintiff,	:	ORDER
vs.	:	
GLEN K. VERNON, et al.,	:	Civil No. 900400796 Hon. Ray M. Harding
Defendants.	:	

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This matter came before the court on plaintiffs' Motion to Rule on all Claims Presented in the Motion for Summary Judgment and defendants' Motion to Strike Plaintiffs' Motion to Rule on all Claims Presented in the Motion for Summary Judgment. Based upon the memoranda on file and the authorities cited therein, the court issued a Memorandum Decision dated December 16, 1991, on the motions. The court determined that plaintiffs' motion was a motion to reconsider which is not recognized in Utah. Alternatively, the court found that all issues presented by plaintiffs' motion were time barred by Utah Code Ann. §20-11-21 and Article VI, Section 1, of the Utah Constitution as determined in the Summary Judgment signed by the court on December 2, 1991.

Accordingly, plaintiffs' Motion to Rule on all Claims is denied and defendants' Motion to Strike Plaintiffs' Motion to Rule on all Claims is granted.

DATED this 31 day of January, 1992.

BY THE COURT

RAY M. HARDING, Judge

APPROVED AS TO FORM:

Mark Buchi
David J. Crapo

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Compiler's Notes. — The 1971 proposed amendment to this article by Senate Joint Resolution No. 11 was repealed and withdrawn by Senate Joint Resolution No. 1, Laws 1972.

The 1972 amendment of Article VI was proposed by Senate Joint Resolution No. 1, Laws 1972, and approved at the general election on November 7, 1972. Not all sections in this article were affected by the amendment.

Section 1. [Power vested in Senate, House and People.]

The Legislative power of the State shall be vested:

1. In a Senate and House of Representatives which shall be designated the Legislature of the State of Utah.

2. In the people of the State of Utah, as hereinafter stated:

The legal voters or such fractional part thereof, of the State of Utah as may be provided by law, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people for approval or rejection, or may require any law passed by the Legislature (except those laws passed by a two-thirds vote of the members elected to each house of the Legislature) to be submitted to the voters of the State before such law shall take effect.

The legal voters or such fractional part thereof as may be provided by law, of any legal subdivision of the State, under such conditions and in such manner and within such time as may be provided by law, may initiate any desired legislation and cause the same to be submitted to a vote of the people of said legal subdivision for approval or rejection, or may require any law or ordinance passed by the law making body of said legal subdivision to be submitted to the voters thereof before such law or ordinance shall take effect.

History: Const. 1896; Nov. 6, 1900.

Cross-References. — Direct legislation elections, § 20-11-1 et seq.

Distribution and separation of powers, Utah Const., Art. V.

Enabling Act provisions, Enabling Act, § 19.

Statutory provisions relating to legislature, Title 36; to statutes, Title 68.

NOTES TO DECISIONS

ANALYSIS

Administrative bodies.
Federal courts.
Initiative and referendum.
Legislative power.
—Delegation.
—Division of powers.
—Extent.
—Limits.
Repeal of council-manager charter of city.
Statutes.
Statutes presumed valid.
Taxation.

Administrative bodies.

When a policy has been prescribed by statute, the power to make rules and regulations to carry the policy into effect may be conferred upon or delegated to an administrative agent such as a board or commission. State v. Goss, 79 Utah 559, 11 P.2d 340 (1932).

An administrative body within prescribed limits, and when authorized by the law-making power, may make rules and regulations calculated to carry into effect the expressed legislative intention. Western Leather & Finding Co. v. State Tax Comm'n, 87 Utah 227, 48 P.2d 526 (1935).

Sec. 12. [Board of Pardons — Respites and reprieves.]

Until otherwise provided by law, the Governor, Justices of the Supreme Court and Attorney General shall constitute a Board of Pardons, a majority of whom, including the Governor, upon such conditions as may be established by the Legislature, may remit fines and forfeitures, commute punishments, and grant pardons after convictions, in all cases except treason and impeachments, subject to such regulations as may be provided by law, relative to the manner of applying for pardons; but no fine or forfeiture shall be remitted, and no commutation or pardon granted, except after a full hearing before the Board, in open session, after previous notice of the time and place of such hearing has been given. The proceedings and decisions of the Board, with the reasons therefor in each case, together with the dissent of any member who may disagree, shall be reduced to writing, and filed with all papers used upon the hearing, in the office of such officer as provided by law.

The Governor shall have power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment; but such respites or reprieves shall not extend beyond the next session of the Board of Pardons; and such Board, at such session, shall continue or determine such respite or reprieve, or they may commute the punishment, or pardon the offense as herein provided. In case of conviction for treason, the Governor shall have the power to suspend execution of the sentence, until the case shall be reported to the Legislature at its next regular session, when the Legislature shall either pardon, or commute the sentence, or direct its execution; and the Governor shall communicate to the Legislature at each regular session, each case of remission of fine or forfeiture, reprieve, commutation or pardon granted since the last previous report, stating the name of the convict, the crime for which convicted, the sentence and its date, the date of remission, commutation, pardon or reprieve, with the reasons for granting the same, and the objections, if any, of any member of the Board made thereto.

History: Const. 1896; L. 1979, S.J.R. 7.

NOTES TO DECISIONS

ANALYSIS

Composition of board.

Legislature is given power and authority to change the personnel of the board of pardons. Cardisco v. Davis, 91 Utah 323, 64 P.2d 216 (1937).

The phrase "until otherwise provided by law" in this section means until otherwise provided by Legislature and does not mean until changed by constitutional amendment so that statute providing for make-up of board of pardons was valid and board had legal status. Adriano v. Turner, 20 Utah 2d 350, 437 P.2d 891 (1968).

Condition for termination of sentence.

Condition for termination of sentence imposed by board of pardons that prisoner agree to leave state was not unconstitutional as amounting to banishment. Mansell v. Turner, 14 Utah 2d 352, 384 P.2d 394 (1963).

Exclusiveness of pardoning power.

Under this section, only board of pardons has right to commute punishments and grant pardons. State ex rel. Bishop v. State Bd. of Cors., 16 Utah 478, 52 P. 1090 (1898).

Statute, giving power of parole to board of corrections, held invalid as in conflict with this

Sec. 5. [Municipal corporations — To be created by general law — Right and manner of adopting charter for own government — Powers included.]

Corporations for municipal purposes shall not be created by special laws. The legislature by general laws shall provide for the incorporation, organization and classification of cities and towns in proportion to population, which laws may be altered, amended or repealed. Any incorporated city or town may frame and adopt a charter for its own government in the following manner:

The legislative authority of the city may, by two-thirds vote of its members, and upon petition of qualified electors to the number of fifteen per cent of all votes cast at the next preceding election for the office of the mayor, shall forthwith provide by ordinance for the submission to the electors of the question: "Shall a commission be chosen to frame a charter?" The ordinance shall require that the question be submitted to the electors at the next regular municipal election. The ballot containing such question shall also contain the names of candidates for members of the proposed commission, but without party designation. Such candidates shall be nominated in the same manner as required by law for nomination of city officers. If a majority of the electors voting on the question of choosing a commission shall vote in the affirmative, then the fifteen candidates receiving a majority of the votes cast at such election, shall constitute the charter commission, and shall proceed to frame a charter.

Any charter so framed shall be submitted to the qualified electors of the city at an election to be held at a time to be determined by the charter commission, which shall be not less than sixty days subsequent to its completion and distribution among the electors and not more than one year from such date. Alternative provisions may also be submitted to be voted upon separately. The commission shall make provisions for the distribution of copies of the proposed charter and of any alternative provisions to the qualified electors of the city, not less than sixty days before the election at which it is voted upon. Such proposed charter and such alternative provisions as are approved by a majority of the electors voting thereon, shall become an organic law of such city at such time as may be fixed therein, and shall supersede any existing charter and all laws affecting the organization and government of such city which are now in conflict therewith. Within thirty days after its approval a copy of such charter as adopted, certified by the mayor and city recorder and authenticated by the seal of such city, shall be made in duplicate and deposited, one in the office of the secretary of State and the other in the office of the city recorder, and thereafter all courts shall take judicial notice of such charter.

Amendments to any such charter may be framed and submitted by a charter commission in the same manner as provided for making of charters, or may be proposed by the legislative authority of the city upon a two-thirds vote thereof, or by petition of qualified electors to a number equal to fifteen per cent of the total votes cast for mayor on the next preceding election, and any such amendment may be submitted at the next regular municipal election, and having been approved by the majority of the electors voting thereon, shall become part of the charter at the time fixed in such amendment and shall be certified and filed as provided in case of charters.

Each city forming its charter under this section shall have, and is hereby granted, the authority to exercise all powers relating to municipal affairs, and to adopt and enforce within its limits, local police, sanitary and similar regulations not in conflict with the general law, and no enumeration of powers in this constitution or any law shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not include the power to regulate public utilities, not municipally owned, if any such regulation of public utilities is provided for by general law, nor be deemed to limit or restrict the power of the legislature in matters relating to State affairs, to enact general laws applicable alike to all cities of the State.

The power to be conferred upon the cities by this section shall include the following:

(a) To levy, assess and collect taxes and borrow money, within the limits prescribed by general law, and to levy and collect special assessments for benefits conferred.

(b) To furnish all local public services, to purchase, hire, construct, own, maintain and operate, or lease, public utilities local in extent and use; to acquire by condemnation, or otherwise, within or without the corporate limits, property necessary for any such purposes, subject to restrictions imposed by general law for the protection of other communities; and to grant local public utility franchises and within its powers regulate the exercise thereof.

(c) To make local public improvements and to acquire by condemnation, or otherwise, property within its corporate limits necessary for such improvements; and also to acquire an excess over than [that] needed for any such improvement and to sell or lease such excess property with restrictions, in order to protect and preserve the improvement.

(d) To issue and sell bonds on the security of any such excess property, or of any public utility owned by the city, or of the revenues thereof, or both, including, in the case of public utility, a franchise stating the terms upon which, in case of foreclosure, the purchaser may operate such utility.

History: Const. 1896.

Compiler's Notes. — The bracketed word "that" in Subsection (c) of the last paragraph appeared in this section as published in the Revised Statutes of 1933.

Cross-References. — Incorporation of cities and towns, § 10-2-101 et seq.

Local improvements, § 10-7-20.

Miscellaneous powers of cities and towns, § 10-1-202.

Municipal Code, home rule exceptions to, §§ 10-1-106, 10-3-818.

Powers and duties of all cities, § 10-8-1 et seq.

NOTES TO DECISIONS

Analysis

Classification of cities.
Debt limit.
Improvement districts.
Initiated ordinance.
Legislative power.
Mass transportation system.
Municipal power.
Ordinance licensing nonprofit clubs.
Police power.
Power versus right to operate public utility.
Repeal of council-manager charter of city.
Sewage disposal.
Water conservancy districts.
Withholding tax provision.
Cited.

Classification of cities.

The power of the legislature to classify cities according to population is expressly conferred by this section, and statute passed to enable cities of first class to meet needs and requirements of larger municipalities was general, in

COLLATERAL REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d State and Local Taxation § 218.

C.J.S. — 84 C.J.S. Taxation §§ 68, 73, 170.
Key Numbers. — Taxation ⇐ 63, 158.

Sec. 5. [Local authorities to levy local taxes — Sharing tax and revenues by political subdivisions.]

The Legislature shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may, by law, vest in the corporate authorities thereof, respectively, the power to assess and collect taxes for all purposes of such corporation. Notwithstanding anything to the contrary contained in this Constitution, political subdivisions may share their tax and other revenues with other political subdivisions as provided by statute.

History: Const. 1896; L. 1982, S.J.R. 3.

Cross-References. — Appropriations and tax limitation, § 59-17a-101 et seq.

City taxing power, Utah Const., Art. XI, sec. 5.

County taxing power, § 17-4-3.

Revenue sharing between political subdivisions, § 11-13-16.5.

NOTES TO DECISIONS

ANALYSIS

Agricultural extension work.

Statute (Comp. Laws 1917, § 5292) authorizing contracts between trustees of state agricultural college and county commissioners with respect to agricultural extension work, and authorizing commissioners to provide funds necessary for the work in their respective counties, was not invalid as imposing a tax for county purposes by the legislature. Bailey v. Van Dyke, 66 Utah 184, 240 P. 454 (1925).

Allocation of future tax.

The law is well settled that in exercising the powers of the state, the legislature may require the revenue of a municipality to be applied to uses other than that for which the taxes were levied; thus there was no constitutional transgression in the allocation of certain expected tax increments (generated by new construction in an area of urban blight) for repayment of Redevelopment Agency bonds. Tribe v. Salt Lake City Corp., 540 P.2d 499 (Utah 1975).

"Corporate authorities" construed.

"Corporate authorities," as used in this section, are those municipal officers who either are directly elected by municipality's inhabitants or are appointed in some mode to which such inhabitants have given their assent. State ex rel. Wright v. Standford, 24 Utah 148, 66 P. 1061 (1901).

Court fees.

The provisions of this section were contravened by statute which attempted to fix schedule of county clerks' fees for services in probate matters based on sliding scale where fees increased as values of estates increased, since such attempt was an imposition of taxes without uniformity for counties' use and benefit. Smith v. Carbon County, 90 Utah 560, 63 P.2d 259, 108 A.L.R. 513 (1936).

Dependent mothers.

The phrase "for all purposes of such corporation," is synonymous with the phrase, "public purposes," and Chapter 13 of Title 17 (Public Aid for Dependent Mothers) would be upheld as "public purpose." Denver & R.G.R.R. v. Grand County, 51 Utah 294, 170 P. 74, 3 A.L.R. 1224 (1917).

Discriminatory tax.

A city licensing ordinance which was a revenue-raising measure and put some of the businesses affected on a flat fee basis with only about one-twelfth as much tax as other businesses which paid on a sales tax basis was unconstitutionally discriminatory. Orem City v. Pyne, 16 Utah 2d 355, 401 P.2d 181 (1965).

NOTES TO DECISIONS

Municipal referendum.
This section applies to a municipal referendum Accordingly, names of signers of petition must be checked. Allan v Rasmussen, 101 Utah 33, 117 P.2d 287 (1941).

COLLATERAL REFERENCES

Am. Jur. 2d. — 42 Am Jur 2d Initiative and Referendum § 30

C.J.S. — 82 C.J.S Statutes §§ 124, 125
Key Numbers. — Statutes ⇐ 312, 352

20-11-15.5. Removal of signature from referendum or initiative petition.

(1) (a) Any voter who has signed a referendum or initiative petition may have his signature removed from the petition by submitting a notarized statement to that effect to the county clerk.

(b) In order for the signature to be removed, the statement must be received by the county clerk before he transmits the petition to the lieutenant governor.

(2) Upon receipt of the statement, the county clerk shall remove the signature of the person submitting the statement from the referendum or initiative petition.

(3) No signatures may be removed from a referendum or initiative petition after the petition is submitted to the lieutenant governor.

History: C. 1953, 20-11-15.5, enacted by L. 1987, ch. 130, § 1.

20-11-16. Sufficiency of signatures — Determination and remedies.

(1) (a) Each section of the initiative or referendum petition when signed and verified as provided in this section shall be delivered not less than 120 days before any general election to the county clerk of the county in which the section was circulated.

(b) Not less than 60 days before any general election, the county clerk shall:

(i) check all the names of the signers against the official registration lists of his county;

(ii) certify on the petition whether or not each name is that of a registered voter; and

(iii) transmit all of the sections to the lieutenant governor.

(c) The lieutenant governor shall check off from his record, as they are filed, the number of the sections of the petition filed.

(2) (a) After a petition is filed, the lieutenant governor shall count the number of names appearing on each verified circulation sheet certified by the county clerks.

(b) If the number of names properly signed, verified, and certified to by the county clerks equals or exceeds the number of names required by the provisions of this chapter, he shall mark upon the front of the petition the word "sufficient."

(c) If the names properly signed, verified, and certified to by the county clerks do not equal or exceed the number required by this chapter, he shall mark upon the front of the petition the word "insufficient."

(d) The lieutenant governor shall immediately notify any one of the sponsors of his finding.

(3) If the lieutenant governor finds the number of properly signed, verified, and certified petitions to be "insufficient," the sponsors or any of them may demand in writing a recount of the names appearing on the petition in the presence of the sponsors or any of them.

(4) (a) If the petition is found insufficient through lack of signers, the sponsors may demand additional circulation sheets by paying the costs for those sheets.

(b) The lieutenant governor shall:

(i) bind the new circulation sheets to whatever sections of the petition that the sponsors designate;

(ii) allow the sponsors to withdraw those sections for purposes of recirculation; and

(iii) keep a record of the numbers of all sections withdrawn.

(5) (a) If the lieutenant governor refuses to accept and file any petition for initiative or referendum, within ten days after the refusal any citizen may apply to the Utah Supreme Court for an extraordinary writ to compel him to do so.

(b) If the court determines that the petition is legally sufficient, the lieutenant governor shall file it, with a certified copy of the judgment attached to it, as of the date on which it was originally offered for filing in his office.

(c) If the court determines that any petition filed is not legally sufficient, the court may enjoin the lieutenant governor and all other officers from certifying or printing the ballot title and numbers of that measure on the official ballot for the ensuing election.

History: L. 1917, ch. 56, § 16; C.L. 1917, § 2305; R.S. 1933 & C. 1943, 25-10-16; L. 1977, ch. 95, § 5; 1984, ch. 68, § 53; 1991, ch. 281, § 5.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added the subsection designations; substituted "120" for "150" in Subsection (1)(a) and "properly signed, verified, and certified to by the county clerks" for "so counted" in Subsection (2)(b); inserted "Not less than 60 days before any general election, the" in Subsection (1)(b) and "If the lieutenant governor finds the number of properly signed, verified, and certified petitions to be" in Subsection (3)(a); deleted "not less than 127 days before any general election" after "signers" in Subsection (1)(b)(i); and made minor stylistic changes throughout the section.

NOTES TO DECISIONS

ANALYSIS

Addresses of signers.

Signatures on initiative petition, after which post-office addresses and street addresses or places of residence were omitted, could not be counted. Halgren v. Welling, 91 Utah 16, 63 P.2d 550 (1936).

Delivery of petition.

The delivery to the county clerk, provided for by this section, must be performed by the spon-

days after his previous proclamation, proclaim all those measures approved by the people as law which the Supreme Court has decided not to be in conflict, and of all those which the Supreme Court shall have decided to be in conflict he shall proclaim as law the one which has received the greatest number of affirmative votes, regardless of difference in majorities.

History: L. 1917, ch. 56, § 20; C.L. 1917, § 2309; R.S. 1933 & C. 1943, 25-10-10; L. 1984, ch. 68, § 55.

COLLATERAL REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d Initiative and Referendum §§ 63 to 65.

C.J.S. — 82 C.J.S. Statutes §§ 147, 148.
Key Numbers. — Statutes ⇐ 322, 362.

20-11-21. Direct legislation in counties, cities or towns — Limits on direct legislation.

(1) Subject to the provisions of this chapter, the legal voters of any county, city, or town, in numbers required by this chapter, may initiate any desired legislation and cause it to be submitted to the governing body or to a vote of the people of the county, city, or town for approval or rejection, or may require any law or ordinance passed by the governing body of the county, city, or town to be submitted to the voters before the law or ordinance takes effect.

(2) (a) The legal voters of any county, city, or town may not initiate budgets or changes in budgets, or tax levies or changes in tax levies.

(b) The legal voters of any county, city, or town may not require any budget or tax levy adopted by the governing body of the county, city or town to be submitted to the voters.

History: L. 1917, ch. 56, § 21; C.L. 1917, § 2310; R.S. 1933 & C. 1943, 25-10-21; L. 1981, ch. 102, § 1; 1985, ch. 227, § 1; 1987, ch. 154, § 1.

Amendment Notes. — The 1987 amendment, in Subsection (1), inserted "city, or town" following "county" in three places; designated the former provisions of Subsection (2) as present Subsection (2)(a) and in that subsection inserted "county" preceding "city or town" and substituted "budgets or changes in budgets, or tax levies or changes in tax levies" for "any desired legislation in accordance with Sections 20-11-26 through 20-11-36"; and added present Subsection (2)(b).

NOTES TO DECISIONS

ANALYSIS

Construction and application.

The legal voters may require an ordinance adopted by city commission vacating city street to be submitted to vote of people before it becomes effective. Provo City v. Denver & R.G. W.R.R., 156 F.2d 710 (10th Cir.), cert. denied, 329 U.S. 764, 67 S. Ct. 124, 91 L. Ed. 658 (1946).

Legislative or administrative powers.

A resolution passed by city board of commissioners directing mayor to execute an acceptance of offer from bond brokers to buy city's bonds is legislative in character; therefore, the approval or rejection of the resolution is proper subject matter for referendum. The city recorder is required to accept and file the resolution as a mere ministerial duty; he is not required to pass upon the validity of the resolution. Keigley v. Bench, 90 Utah 569, 63 P.2d 262 (1936).

Initiated ordinance which authorized executive department of city to contract for erection and construction of electric power plant and

(4) If the total number of votes does not exceed 500, but is more than 250, the petition shall be signed by 20%.

(5) If the total number of votes does not exceed 250, the petition shall be signed by 30%.

History: L. 1917, ch. 56, § 22; C.L. 1917, § 2311; R.S. 1933 & C. 1943, 25-10-22; L. 1981, ch. 102, § 2; 1985, ch. 227, § 2; 1987, ch. 154, § 2.

Amendment Notes. — The 1987 amendment redesignated the provisions of this section as last amended by Laws 1985, ch. 227, § 2; in the introductory paragraph inserted "city or town" following "county" in the first and third appearances and inserted "in the county, city, or town" following "sign by legal voters"; and made minor changes in phraseology and punctuation throughout the section.

COLLATERAL REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d Initiative and Referendum § 27.

C.J.S. — 82 C.J.S. Statutes § 123.

Key Numbers. — Statutes ⇐ 309, 349.

20-11-23. Procedure.

(1) In all counties, cities, and towns the manner of exercising the initiative and referendum powers reserved by the constitution to the people shall be similar to the procedure prescribed by this chapter for the state initiative and referendum.

(2) (a) The duties required of the county clerk and the lieutenant governor by this chapter for initiatives and referendums on state legislation shall be performed by the county clerk, city recorder, or town clerk for initiatives and referendums on county or municipal legislation.

(b) The duties required of the governor for state initiatives and referendums shall be performed by the chief executive officer of the county, city, or town for initiatives and referendums on county or municipal legislation.

(c) The duties required of the attorney general for state initiatives and referendums shall be performed by the county, city, or town attorney for referendums on county or municipal legislation.

(3) The provisions of this chapter apply in every county, city, and town in all matters concerning the operation of the initiative and referendum in county or municipal legislation.

(4) (a) The printing and binding of the "local voter information pamphlet" shall be paid for by the county, city, or town.

(b) The clerk or recorder shall distribute the pamphlets either by mail or carrier not less than eight days before the election at which the measures are to be voted upon.

History: L. 1917, ch. 56, § 23; C.L. 1917, § 2312; R.S. 1933 & C. 1943, 25-10-23; L. 1981, ch. 102, § 3; 1981, ch. 105, § 1; 1984, ch. 68, § 56; 1985, ch. 227, § 3; 1987, ch. 154, § 3.

Amendment Notes. — The 1987 amendment designated the previously undesignated provisions of this section as last amended by Laws 1985, ch. 227, § 3; in Subsection (1), inserted "cities and towns" following "counties"; in Subsection (2)(a), added "city recorder, or town clerk for initiatives and referendums on county or municipal legislation" at the end; in Subsection (2)(b), added "city, or town for initiatives and referendums on county or municipal legislation" at the end; in Subsection (2)(c), added "city or town attorney for referendums on county or municipal legislation" at the end; in Subsection (3), inserted "city, and town" following "county" in the first place it appears and inserted "or municipal" following "county" in the second place it appears; in Subsection

(b) The summary shall state where a complete copy of the measure is vailable for public review.

ory: C. 1953, 20-11-23.5, enacted by L. ch. 227, § 4; 1987, ch. 154, § 4.
ɔndment Notes. — The 1987 amend- lesignated the previously undesignated ons of Subsection (1) and in Subsection substituted "recorder" for "municipal ns officer"; in Subsection (2)(a), substi- '500 words" for "300 words" and deleted he end "except that if the proposed measure exceeds 1,000 words in length, the clerk or municipal elections officer may summarize the measure in less than 1,000 words. The summary shall state where a complete copy of the proposed measure is available for public review"; added present Subsection (4); and made minor changes in phraseology and punctuation throughout the section.

1-24. Time for filing referendum petitions — Definition — Effect of valid referendum petitions.

Referendum petitions against any ordinance, franchise, or resolution ɔd by the governing body of a county, city, or town shall be filed with the or recorder within 30 days after the passage of the ordinance, resolution, anchise.

(a) (i) For purposes of this section, "law or ordinance" includes ordinance, master plans, and comprehensive zoning regulations adopted by ordinance or resolution.

(ii) "Law or ordinance" does not include individual property zoning decisions.

(b) When a referendum petition on any law or ordinance adopted under the authority of Chapter 9, Title 10, or Chapter 22, Title 17, is declared sufficient, the law or ordinance subject to referendum is null and void until voted upon by the qualified voters of the county, city, or town.

(c) If the referendum fails, the law or ordinance is effective as of the date of the election.

ɪtory: L. 1917, ch. 56, § 24; C.L. 1917, 3; R.S. 1933 & C. 1943, 25-10-24; L. ch. 102, § 4; 1985, ch. 227, § 5; 1987, 54, § 5.
ıendment Notes. — The 1987 amend- designated the former provisions of this section as Subsection (1) and in Subsection (1) inserted "city, or town" following "county" and "or recorder" following "clerk" and added Subsection (2).

Cross-References. — When ordinances take effect, §§ 10-3-705, 10-3-712.

NOTES TO DECISIONS

ANALYSIS

g requirement.
ıcipal referendum.
ıamus proceedings.

ıg requirement.
e 1977 amendment to § 20-11-16 did not ɜssly nor impliedly repeal the 30-day fil- 'equirement of this section, nor did it au- ze the filing of the referendum petition 'e the completion of the signature check certification. Riverton Citizens for Consti- ınal Gov't v. Beckstead, 631 P.2d 885 h 1981).

Municipal referendum.
Under this and other sections of this chapter, checking the petition is a condition precedent to a legally sufficient petition in case of a municipal referendum. Allan v. Rasmussen, 101 Utah 33, 117 P.2d 287 (1941).

Mandamus proceedings.
In original mandamus proceedings to compel city recorder to receive and file petition for referendum on a resolution of board of commissioners, the question of validity of resolution is not before the Supreme Court for review. However, upon repeal of resolution, right to require referendum election ceases. Keigley v. Bench, 90 Utah 569, 63 P.2d 262 (1936).

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 4 of the Utah Rules of Appellate Procedure, I mailed four copies of the foregoing Appellee's Brief this 11th day of May, 1992, to the following:

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